

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

RICHARD P. WASHBURN	§	
	§	
V.	§	CIVIL ACTION NO. G-01-107
	§	
GREGORY R. DAHLBURG, ET AL.	§	

OPINION AND ORDER

Before the Court is the “Defendants’ Motion for Summary Judgment for Lack of Subject Matter Jurisdiction.” For the reasons stated below, the motion will be granted.

On April 9, 1999, Plaintiff, Richard P. Washburn, opted to file a “mixed case appeal” with the Merit Systems Protection Board (MSPB) alleging the appealable action of reprisal for this whistle-blowing activities coupled with claims of retaliatory employment discrimination based, in part, on sex, age and handicap, including the denial of a promotion and a Quality Step Increase (QSI) in pay. See 29 CFR § 1614.302(a)(2) The “mixed case appeal” was filed with the MSPB’s Office of Special Counsel, as required by 5 CFR § 1209.2(b)(1), because the adverse personnel actions taken against Washburn are listed in 5 CFR § 1209.4(a)(2) and (9). Unfortunately, for Washburn, a “mixed case appeal” must be filed with the MSPB “no later than 30 days after the effective date” of the retaliatory actions being appealed. 5 CFR § 1201.154(a) Washburn alleged that he was denied the promotion to GS-12 prior to the spring of 1997. He further alleged that he earned the QSI, which he was denied, on December 17, 1998. Washburn simply waited too long to complain of these reprisals and his “mixed case appeal” is time-barred. This Court, therefore, lacks jurisdiction to consider his unexhausted Title VII claims. Randel v. United States Department of the Navy, 157 F.3d 392 (5th Cir. 1998)

It is, therefore, the ORDER of this Court that the “Defendants’ Motion for Summary Judgment for Lack of Subject Matter Jurisdiction” (Instrument no. 110) is GRANTED for the reasons state herein and all remaining claims asserted by Washburn are DISMISSED for lack of subject matter jurisdiction.

DONE at Galveston, Texas, this 14th day of June, 2005.



John R. Froeschner
United States Magistrate Judge